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Letter dated 20 July 2015 from the Permanent Representative of the Netherlands to the United Nations addressed to the President of the Security Council

I am writing to you in your capacity as President of the Security Council for the month of July 2015.

With reference to Security Council resolution 2166 (2014), as well as my previous letters to the Council of 1 and 28 August 2014, 9 September 2014 and 16 December 2014 regarding the downing of Malaysia Airlines flight MH17, I have the honour to provide you with an update on the steps that the Netherlands has taken since my last letter to the Council with regard to the repatriation and recovery efforts, the technical investigation and the accountability process.

Repatriation and recovery mission

The central process of identification of the victims was concluded on 1 July 2015. An improvement in the security situation enabled experts participating in the recovery mission, with the support of the Organization for Security and Cooperation in Europe (OSCE), to finally visit the burn sites in April and search them thoroughly. Although the experts made all possible efforts, we cannot exclude the possibility that more remains will be discovered in the area in the future. We have made all necessary agreements with local authorities and populations to prepare for such an eventuality.

At this moment, 296 out of 298 victims have been identified and death certificates have been issued to next of kin. Only two victims, both of Dutch nationality, remain to be identified. We are currently consulting closely with the next of kin on the process of transferring human remains and personal belongings of the victims to them.

On 10 June 2015, the Dutch Ministry of Foreign Affairs briefed grieving nations (States that had lost nationals on flight MH17) on the progress of the identification process, the process of transferring personal belongings of the victims to next of kin, the commemoration service planned for 17 July 2015 and progress in distributing death certificates by Ukraine.

On 17 July 2015, one year after the downing of flight MH17, the Dutch foundation representing Dutch next of kin organized a commemoration service in Nieuwegein, the Netherlands. Malaysia Airlines covered the travel costs for non-Dutch next of kin who had expressed a wish to participate. Dutch Prime

Minister Mark Rutte attended the service, joined by several members of his Cabinet. Remembrance services were also held, inter alia, in Australia, Malaysia and Ukraine.

International technical investigation into the cause of the crash

The Netherlands remains fully committed to the resolution of the Council of the International Civil Aviation Organization (ICAO) of 28 October 2014, in which the Council, inter alia, urged the Netherlands, supported by concerned States and organizations, to continue and finalize the independent international investigation, led by the Dutch Safety Board.

The Dutch Safety Board concluded its investigations within a year after the incident. On 2 June 2015, it presented a draft final report for review to the accredited representatives of the States participating in its investigation, in accordance with annex 13 to the Convention on International Civil Aviation. These representatives are requested in annex 13 to send their comments within 60 days, after which the Board will evaluate the comments and compile the final report. On 1 July 2015, the Board informed ICAO on the state of play of its investigation into the downing of MH17 and announced its intention to publish the final reports before mid-October 2015, as stated on its website: http://www.onderzoeksraad.nl/en/onderzoek/2049/investigation-crash-mh17-17-july-2014/inzage/1643/progress-of-the-mh17-investigation#fasen.

These proceedings are fully in accordance with recommendation 6.6 of annex 13, which states that "The State conducting the investigation should release the final report in the shortest possible time and, if possible, within 12 months of the date of the occurrence. If the report cannot be released within 12 months, the State conducting the investigation should release an interim report on each anniversary of the occurrence, detailing the progress of the investigation and any safety issues raised."

As with the preliminary report, I will forward to the Security Council a copy of the final report as soon as it is published. I would like to take this opportunity to stress once again the independent nature of this report, which means that the Dutch Government does not have any prior knowledge of the substance of the final report.

Accountability

The joint investigation team, comprising the prosecution authorities from Australia, Belgium, Malaysia, the Netherlands and Ukraine, has been working very closely together in the criminal investigation, fully independent of the Governments of the respective countries.

The investigation is ongoing and continues to identify new evidential material and avenues of inquiry. On 30 March 2015, a call for witnesses was released, which generated useful information. As a result, multiple witnesses have been heard and additional interviews are being planned. As is common in criminal investigations, confidentiality must be preserved in order not to compromise the ongoing investigation or prejudice a subsequent prosecution. Divulging confidential information, to which the Dutch Government is not privy, considering the independence of the Prosecutor's Office, would compromise the investigation. Nevertheless, for the sake of maximum transparency, the following can be shared.

The recovered wreckage of MH17 has been investigated. From 15 to 29 June 2015, the joint investigation team deployed a new investigative mission to Eastern Ukraine, facilitated by OSCE, to recover additional evidence, which will be used to evaluate different scenarios for the cause of the crash. This included taking soil samples from multiple locations and conducting technical research into the locations of telecommunication antennas and the coverage of the telephone network in Eastern Ukraine.

Cooperation from other States with the investigations has been constructive. The joint investigation team received substantial amounts of information from various countries, which is still being evaluated.

The independent Dutch Public Prosecutor who heads the joint investigations team, Fred Westerbeke, has stated publicly that progress is being made and that the aim is to conclude the investigation at the earliest possibility. The Dutch Government explicitly refrains from any speculation or accusation regarding criminal liability for the downing of MH17.

Carrying out the investigation is taking some time, given both the scope and the complexity of the case, as well as its international dimension.

To ensure that justice can be done effectively, the countries united in the joint investigation team have chosen to coordinate efforts for setting up a prosecution mechanism. They are committed to ensuring that the most effective and broadly supported mechanism available under international law is utilized, given the gravity of this attack on peaceful civil aviation. An ad hoc international criminal tribunal established by the Security Council under Chapter VII of the Charter of the United Nations meets these standards and would be consistent with, and build upon, Council resolution 2166 (2014). A Council-established international criminal tribunal would maximize international cooperation, which will be needed for an effective prosecution and trial.

In the interest of justice, there should be as little time as possible between the finalization of the investigation and the commencement of the tribunal's activities. Most other international or internationalized criminal tribunals were established prior to the completion of a criminal investigation. The States participating in the joint investigation team are committed to achieving justice in a manner that transcends international or national politics. Establishing a tribunal before the outcome of investigations is known is consistent with this commitment. The prosecutor of the tribunal would be entirely independent and would have the power to conduct additional investigations.

On 2 July 2015, Malaysia, on behalf of the countries united in the joint investigation team, therefore informed the Security Council of its intent to put forward a resolution requesting the establishment of such a tribunal.

Way forward

The Netherlands strongly believes that impunity for such acts of violence against peaceful civil aviation threatens international peace and security. The Security Council recognized this in resolution 2166 (2014) when it reaffirmed the prohibition of acts of violence that pose a threat to international civil aviation, when it called on all States to cooperate fully with any criminal investigations related to this incident and, most notably, when it formulated an international obligation for

all States to prosecute the perpetrators by demanding that those responsible for this incident be held to account and that all States cooperate fully with efforts to ensure accountability.

In doing so, and in deciding to remain actively seized of the matter, the Security Council, as the highest political organ representing the international community, established a role for itself. Resolution 2166 (2014) acknowledged the Council's authority in the matter, as well as its responsibility to see it through to its logical conclusion: ensuring that States comply with the demand for accountability.

Malaysia, on behalf of the joint investigation team, has brought to the Security Council a full-fledged proposal for an international criminal tribunal, to be established under Chapter VII so as to guarantee that the legally binding demand by the Council for accountability is backed up by a similarly internationally binding investigation and prosecution mechanism. We ask the Council to consider this proposal favourably. A letter by the Permanent Representatives of Australia, Belgium, Malaysia, the Netherlands and Ukraine requesting the Council to establish an ad hoc tribunal was sent on 10 July 2015.

In the meantime, we welcome all efforts by the Security Council to call on all States and other actors in the region to continue to cooperate with the international investigations in accordance with resolution 2166 (2014).

Let me conclude by assuring you once again that the Netherlands spares no effort to fulfil its responsibilities with regard to the coordination of all international efforts in recovery and repatriation, the independent technical investigation and the criminal accountability process. As part of this responsibility, the Netherlands will keep the Council informed accordingly.

I would be grateful if you could have the present letter circulated as a document of the Security Council.

(*Signed*) Karel J. G. **van Oosterom**
Ambassador